

Payday for scheme donors came in *West Virginia v. EPA*. At least 14 polluter front group amici showed up to push in chorus for their major questions doctrine—the usual suspects—funded by fossil fuel dark money, like Cato, the Koch flagship Americans for Prosperity, and the Competitive Enterprise Institute.

Justice Gorsuch's concurrence is rife with citations legitimizing doctrine factory "scholarship." He cites articles written by the founder and president of the Free State Foundation, a member of the dark money State Policy Network; by a member of the dark money Federalist Society's Administrative Law Group executive committee; and by the former president of the Koch-funded American Enterprise Institute.

The scheme is all about boosting corporate power and rolling back government regulations. It is not just about building a dark money Court; it is about front groups by the dozen which operate in coordinated flotillas; it is about faux scholarship—reverse-engineered in a parallel universe of faux academia—to give polluters power over government; and it is about more than a half a billion dollars in dark money spent to set up and run the whole sham enterprise.

The attack on regulation began with an effort to revive the so-called non-delegation doctrine discarded by the Supreme Court almost 100 years ago. Like the major questions doctrine, the nondelegation doctrine allowed courts to strike down Agency rules when Congress wasn't explicit enough in delegating power. Polluters loved it. Scheme front groups like the Cato Institute—propped up by the dark money from the fossil fuel billionaire Koch family and from companies like ExxonMobil—sponsored research that argued for reviving the nondelegation doctrine. They organized conferences and seminars, lobbied legislators, and funded law groups designed to spread the idea far and wide.

But "major questions" had one advantage. Years ago, on the DC Circuit Court of Appeals, Justice Breyer had used those two words once, in passing, in a lengthy law review article. They could seize that camouflage. And guess what. "Major questions" is just "non-delegation" in disguise. If you don't believe me, let's go back to Justice Gorsuch in a concurrence from another case earlier this year:

[T]he major questions doctrine is closely related to what is sometimes called the non-delegation doctrine. Indeed, for decades, courts have cited the nondelegation doctrine as a reason to apply the major questions doctrine. . . . Whichever the doctrine, the point is the same.

Indeed. The point is that a Court captured by polluter interests will find any way it can to import polluter doctrine—cooked up in polluter-funded doctrine factories—into the law of the land, and that is just what they just did in *West Virginia v. EPA*. For the polluters, mission accomplished.

The Court that dark money built had already wreaked havoc in our law. Even before they got to six, they had run up 80 5-to-4 partisan decisions benefiting big Republican donor interests—80 5-to-4 partisan decisions benefiting big Republican donor interests. Now with six Justices, they have set about destroying precedent left and right, taking away the constitutional right of women to control their own reproductive decisions, blocking efforts to reduce gun violence, and now adopting new theories to empower polluters against public health regulation.

The FedSoc Six's hatred for regulation isn't shared much outside the polluter-funded parallel universe. Most Americans appreciate regulations. They appreciate regulations that help make sure food and water are safe, that their air is clean to breathe, that medicines actually work, that markets operate honestly, that investors have real information, and that car seats protect you in a car wreck. The American people are right to sense that something is deeply amiss at the U.S. Supreme Court.

A captured Court presents an unprecedented challenge to the other branches of government, but we aren't helpless.

First, we need to start telling the truth about what is going on. The pattern is unmistakable, and people across the country need to understand this is not right; this is not normal. We can also pass laws like my DISCLOSE Act, which I hope will be coming up for a vote shortly, to shine light on the dark money donors who captured our Court in a long scheme.

We can require real ethics requirements for Supreme Court Justices, just like all other Federal judges already have. Remember the ongoing ethics investigations against Judge Kavanaugh? They were dropped, not because they were resolved, not because they ended, not because he was found not culpable; they were dropped against Judge Kavanaugh because he escaped to the Supreme Court, where ethics investigations don't exist, so they had to shut down the ongoing investigations. That is a terrible signal.

We can also require Justices to report gifts and hospitality, as all other judges do and all senior government officials do in the executive and legislative branches.

There are many ways to push back against the new "ruling class" of "unaccountable ministers" occupying the captured Court and to assure the American people that fairness and justice, and not the Court's deep-pocketed special interest friends, are what drives Court decisions.

There is a lot to be done, and we need to begin. To be continued.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

## LEGISLATIVE SESSION

### MORNING BUSINESS

Mr. WHITEHOUSE. Madam President, I ask unanimous consent that the Senate proceed to legislative session to be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

### AFGHANISTAN

Mr. HAWLEY. Madam President, following my submission yesterday, I ask unanimous consent to have printed in the RECORD the next part of an investigation directed by the U.S. Central Command concerning the Abbey Gate bombing in Afghanistan in August 2021.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### ACTS-SCK-DO

Subject: Findings and Recommendation—Attack Against U.S. Forces Conducting NEO at Hamid Karzai International Airport on 26 August 2021

(i) Throughout the NEO, USFOR-A FWD spent a significant amount of time coordinating special evacuation requests on behalf of the interagency, congressional representatives and senators, and the White House (exhibits 13, 15, 18, 20, 21, 22). The USFOR-A FWD staff estimated they received over 4000 such requests during the nine days ECPs were operating (exhibits 13, 20, 21, 22). (TEXT REDACTED) USFOR-A FWD Deputy Commanding General, referred to these evacuees as privileged personnel exhibit 21). USFOR-A FWD's (TEXT REDACTED) and Embassy (TEXT REDACTED) worked with subordinate staffs to action many of these requests. They would coordinate with the potential evacuees for challenge and password or other identification, visit gates, seek out the evacuees, physically pull them from the crowd, and get them processed through DoS and the Evacuation Control Center (ECC) (exhibits 17, 20, 22, 100, 108, 122).

(ii) (TEXT REDACTED) along with members of the JTF-CR staff, were primarily responsible for coordinating multi-national activities and requests through the Multi-National Coordination Cell (MNCC) (exhibits 15, 18, 20, 21, 22). The MNCC met daily, along with other Ambassador groups, to coordinate air and lift requirements for partner nations, and Afghans sponsored by those nations to depart (exhibits 20, 21, 22). Many of the other nations working out of HKIA and conducting NEO were completely dependent on the U.S. for airlift (exhibit 21). USFOR-A FWD, with JTF-CR, formed the International Coordination Cell (ICC), which was a broader forum for handling the extensive privileged persons' requests from partner nations (exhibit 21). (TEXT REDACTED) USSFOR-A FWD Chief of Staff, and Commander. 3/10 IBCT, was responsible for working these issues (exhibits 21, 126). The ICC also provided a forum to synchronize bulk movement and arrival of passport holders or cleared individuals from all nations through South Gate (exhibit 126). This included building and allocating movement tables and coordinating with Taliban commanders for passage of vehicles (exhibit 126). (TEXT REDACTED) coordinated with 1/82 IBCTs (TEXT REDACTED) to request TF Wild Boar support for receiving these coordinated arrivals at the various gates (exhibit 247). TF Polar Bear was a force on the ground